

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,) CASE NO. 2:19-cr-163(1)
)
 vs.)
)
 YU ZHOU,)
)
 DEFENDANT.)
_____)

TRANSCRIPT OF DETENTION HEARING AUDIO-RECORDED PROCEEDINGS
BEFORE THE HONORABLE KIMBERLY A. JOLSON, MAGISTRATE
MONDAY, SEPTEMBER 16, 2019; 3:35 P.M.
COLUMBUS, OHIO

FOR THE PLAINTIFF:
Benjamin C. Glassman
United States Attorney
By: S. Courter Shimeall
Peter Glenn-Applegate
Assistant United States Attorneys
303 Marconi Boulevard, 2nd Floor
Columbus, Ohio 43215

FOR THE DEFENDANT:
Seiden Netzký Law Group
By: Glenn Seiden, Esq.
333 South Wabash Avenue, Suite 2700
Chicago, Illinois 60604

Neil W. Rosenberg, Esq.
400 South Fifth Street, Suite 301
Columbus, Ohio 43215

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Monday Afternoon Session

September 16, 2019

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In open court:

COURTROOM DEPUTY: Case number 2:19-cr-163, defendant number 1, United States v. Yu Zhou.

THE COURT: Good afternoon. Will counsel please make their appearances on the record, beginning with counsel for the government.

MR. SHIMEALL: Good afternoon, Your Honor. Courter Shimeall appearing with co-counsel Peter Glenn-Applegate on behalf of the United States.

THE COURT: Thank you.

MR. SEIDEN: Glenn Seiden, S-e-i-d-e-n, for Mr. Zhou.

MR. ROSENBERG: And Neil Rosenberg also on behalf of defendant.

THE COURT: Thank you. This matter comes before the Court on the request of the government to detain the defendant pending trial of this matter.

First in considering this request, I'll note that the defendant is entitled to the presumption of innocence. Nothing that happens in this courtroom or that I set forth in my findings is intended to affect that presumption.

Second, under the Bail Reform Act, pretrial detention is an exceptional step. Under the act, a defendant must be

1 released prior to trial unless and until a judicial officer
2 finds that no condition or set of conditions could -- could
3 exist that would both reasonably assure the defendant's
4 appearance at future court proceedings and reasonably assure
5 the safety of the community.

6 Finally, the act requires that the least restrictive
7 conditions be imposed to provide those reasonable assurances.

8 With that backdrop, I'd like to hear evidence from each
9 side, and then we'll move to argument.

10 Mr. Shimeall, how would you like to begin today on
11 behalf of the United States?

12 MR. SHIMEALL: Your Honor, the United States would
13 proffer the allegations of the indictment as well as the
14 exhibits put forth -- put forth in the previous hearing and
15 draw upon those exhibits in this hearing as well.

16 THE COURT: Okay. Thank you. Defense counsel, how
17 would you like to begin today?

18 MR. SEIDEN: Your Honor, we have -- we have exhibits,
19 and we have them on the previous matter. So I'm going to ask
20 to adopt those --

21 THE COURT: Okay. Thank you.

22 MR. SEIDEN: -- to save the trouble.

23 THE COURT: Thank you. I appreciate that. With that,
24 I'm going to ask the United States to begin with argument.

25 MR. SHIMEALL: Thank you, Your Honor.

1 Your Honor, the United States begins by noting that by
2 all indications the parties at this hearing were also present
3 in the previous hearing, and the United States advances the
4 same arguments, adopts them for the purposes of this hearing,
5 and also points out a couple of additional indicators of the
6 defendant's conduct in this case and for the same reasons that
7 have been stated, believes the defendant to be a substantial
8 risk of flight in exceeding his detention on the grounds of
9 risk of flight.

10 Your Honor, Exhibit 10, which the government drew your
11 attention to previously, which is the letter for Ms. Chen, that
12 exhibit was found on Mr. Zhou's computer that was taken from
13 him, and at the time of his apprehension, indicating that it's
14 not as if this was a scheme put forth solely by Ms. Chen for
15 all the reasons we've talked about, but he had knowledge of
16 this as well, and beyond his own connections with the
17 International Technology Transfer Network, his serving on that
18 committee, and beyond being paid by SAFEA.

19 He was aware of the additional talent pool, the process
20 and applications by Ms. Chen. And as the indictment indicates
21 in paragraph 20M regarding the November email sent by Ms. Chen,
22 there are indications that Mr. Zhou was also engaged with PRC
23 government programs, talent pooling programs, and that is the
24 November 1st email from 2016, part of which relates to a
25 document regarding his performance as an expert for a Beijing

1 foreign experts and foreign affairs employment center, which is
2 a municipal-level expert program connected to the broader PRC.

3 Your Honor, the United States also points to Exhibit --
4 let's see -- 11. Mr. Zhou's travel is much more extensive than
5 Ms. Chen's. He is connected in the Chinese business
6 environment in the same regard that Ms. Chen is, if not with
7 greater depth, because he was the one whose name was on the
8 paperwork for Avalon.

9 Even though Ms. Chen participated, he executed the asset
10 purchase agreement. He executed the stock purchase agreement,
11 and that asset purchase agreement was the 900 or so thousand
12 dollars in exchange for the intellectual property related to
13 his Chinese company that was then subsumed in the American
14 company.

15 He entered into the executive retention agreement that
16 paid him roughly \$160,000 a year by the American company, and
17 he signed an employee invention assignment regarding
18 intellectual property and promised not to work any competitor
19 of GenExosome Technologies here in the United States.

20 The government also points to Exhibit 12 which were
21 documents found on Mr. Zhou at the time of his apprehension.
22 The first document I can proffer to the Court by all
23 indications is a driver's license for Hunan province regarding
24 Mr. Zhou. It lists his date of birth as well.

25 The second document is some other form of

1 identification. We are still trying to work through to wrap
2 our arms around what this is, but it bears indications of
3 identification for something in China.

4 And then the third picture is, frankly, what appears to
5 be a cryptocurrency with some sort of roving RSA token. The
6 agents in the case, at the time of the apprehension and this
7 was seized, indicated that this has some resemblance of a
8 cryptocurrency card that can be used in China.

9 Mr. Zhou indicated in his interview that he has family
10 in China and alluded to parents who are in China. And, Your
11 Honor, the same reasons regarding Ms. Chen would apply with
12 full, if not more, force to Mr. Zhou again.

13 Again, he was the one whose name was on the documents
14 regarding the American business deals, and he has great
15 business connections in China. He has no property in this
16 district, and the arguments regarding any property that would
17 be put forth are renewed as to him as well.

18 For these reasons, Your Honor, we do believe that he is
19 a substantial risk of flight, and the preponderance of the
20 evidence shows that he is at great risk of flight and he should
21 remain detained. Thank you, Your Honor.

22 THE COURT: Thank you, Mr. Shimeall. Counsel.

23 MR. SHIMEALL: Thank you, Judge.

24 MR. SEIDEN: Good afternoon, Your Honor.

25 THE COURT: Good afternoon.

1 MR. SEIDEN: I'm going to adopt -- perhaps I
2 shouldn't -- but I'm going to adopt much of what Mr. Nolder
3 said so that I can save time and this Court's attention.
4 (Inaudible.)

5 I had an opportunity to sit here and listen to all the
6 trade secrets regarding exosome -- I'll get this right --
7 isolation of exosomes; and while I was sitting here, I got on
8 my phone and I looked up exosomes isolation, and I found about
9 five or six companies on the first page that sell commercially
10 exosome isolation kits.

11 This is what the trade secret is that was so very
12 important that shouldn't be taken. We haven't heard any
13 evidence. We haven't heard anything that is suggested that
14 anything that has been violated in this case is other than a
15 practice and procedure of a hospital. Not law. Nothing that
16 applies to this Court to -- to enforce, except by virtue of a
17 civil case.

18 However, they are suggesting there was a trade secret.
19 I haven't heard anything -- we -- we -- we sat here for 40
20 minutes listening to a lot of words and no substance with
21 regard to what is claimed.

22 The only reason I bring this up is -- I'm not trying the
23 case now, but it is very apparent that during the course of
24 this case, when we do go to trial, the government is far and
25 away -- you are a mile away from any proof.

1 Your Honor, I've been doing this for 45 years. I
2 virtually never say that. This is the first time in my career
3 I've ever had to ask that an individual who is attempting to
4 cure cancer, at least to discover cancer in pediatric infants
5 and unborn children, should be faced with detention while his
6 case is being heard.

7 Normally, I have to say, well, I'm worried about this
8 man going back to this country because he sold drugs or because
9 he did something ever so terrible that he's going to run away.

10 We're talking about an individual who has spent ten
11 years attempting to cure right now an incurable disease.

12 The government has argued that there -- that SAFEA --
13 I'm not good with names, Judge. I mean no disrespect to
14 anybody or any organization if I misname them, but I think he
15 says that SAFEA is company or an organization that attempted to
16 secure people from around the world for the purposes of
17 bringing technology into China.

18 We have that. We call it the H-1B visa, which is
19 exactly what we do in this country to secure foreign people who
20 have some ability to this country. It's not against the law
21 here, and it's certainly not against the law there.

22 The travel that Mr. Zhou has done, as the government
23 said, was for conferences, professional exchange of
24 information, to secure -- cure two illnesses.

25 I don't know that you do it, Judge; but for the rest of

1 us who are licensed for a living, we get -- we have to go to
2 conferences all the time to exchange information.

3 And what information are they -- that was claimed to be
4 exchanged? I heard -- I heard counsel say, and he said it very
5 quickly and very small, but I heard it enough to write it down.

6 The information that was exchanged was previously
7 published research. Not authorized. Not authorized by a
8 hospital. We haven't seen anything to suggest that the
9 hospital has authorized it.

10 We haven't seen any agreement. We haven't seen any
11 cease-and-desist memo. We haven't seen anything.

12 Just that this previously published information is part
13 of the conferences that this man has gone to to other
14 countries.

15 He's been here performing this research. He and his
16 wife, who is now detained, thought enough of this country to
17 become citizens, buy a house, earn money, send their child to
18 Johns Hopkins -- again, I'm bad with names -- who is currently
19 at Johns Hopkins as a student.

20 There's not only no reason for him to leave. There is
21 more than enough reason for him to claim his innocence and be
22 here. He's thought enough to have a lawyer, me, from
23 another -- another area, not that Southern District doesn't
24 have any fine lawyers here --

25 THE COURT: I was -- you better be careful.

1 MR. SEIDEN: I have one sitting right here. But they
2 have invested in having attorneys in this case and attorneys
3 represent him to claim his innocence and make the government
4 prove his guilt.

5 I don't like talking about the underlying case because
6 this is not the purpose of this hearing. Apparently, it was
7 for about 35 or 40 minutes before, but it's not the purpose of
8 the hearing.

9 But I do have to recognize the fact that exosome
10 isolation kits are not the sole exclusive property of
11 Nationwide Children's Hospital. They are manufactured
12 commercially by companies all over the country, indeed, all
13 over the world, and they are used to further research.

14 And that is the purpose of conferences. Unauthorized
15 is -- are we here because somebody at a hospital -- remember, a
16 hospital is not a person -- because somebody at a hospital has
17 failed to disclose an email indicating that there was a leave
18 taken to go to another country for -- for a conference?

19 Is it probable that Mr. Zhou could have picked up,
20 walked away from his station at the hospital during his
21 research for a week or two to go to a conference without
22 somebody noticing? No, it's not.

23 So any argument or any suggestion that these were
24 unauthorized, we're a long way from establishing that indeed
25 they are unauthorized or unknown.

1 So we are here, Judge, because this man has apparently
2 gone to some conferences, taken information that was previously
3 published and of record, that any individual could go on the
4 internet and any individual who knew where to look could find
5 it, that any individual could get the -- this trade secret
6 isolation kit that is sold by numbers of companies around the
7 world, and we're sitting here worried about whether or not he's
8 going to flee to China to do that.

9 Why would he flee? Why would he have spent the money --
10 why would he and his wife spend a million two to buy a house in
11 San Diego? Why would they have put the money into an account
12 where everyone can see it?

13 Why would he have gone into business with Avalon, which
14 is American company -- it's not a Chinese company -- located in
15 New Jersey for the purpose of continuing the research?

16 Is this an individual who is hell bent on vacating the
17 United States after getting -- becoming a citizen to be here?
18 It is not.

19 This is not an individual who has any interest in
20 leaving this country for any other reason -- for the reason of
21 this case to be sure.

22 Since I've adopted Mr. Nolder's argument, I don't have
23 to revisit the *You* case. You've already read it during the
24 break. I know that's the case, and I don't have to adopt the
25 fact that they have substantial roots here and enough roots

1 where there are people who are willing to step up -- you've
2 already heard about them -- and place their property at risk,
3 their good names at risk, on behalf of my client.

4 The government has indicated that there is a substantial
5 loss, but they have failed either in the indictment or in their
6 argument to monetize that loss.

7 Nobody has. Nobody has suggested in any piece of paper
8 that has been before this Court, in the indictment to be sure,
9 that the amount of loss is a number. Nobody has suggested that
10 the hospital was going to monetize any of this research.

11 By the way, in the afternoons, Judge, I have to keep my
12 voice up or it disappears. I'm not yelling at you, and I'm not
13 yelling at this court. This is a defect that I have that
14 maybe -- maybe Dr. Chen -- Dr. Zhou will eventually look into.

15 But be that as it may, the government said that he went
16 to these conferences and he was required to disclose it. I saw
17 no evidence of a requirement to disclose.

18 He came in with this very nifty little book saying that
19 are some -- that there are an awful lot of things here that
20 they can't read, but they are in here.

21 But it is improbable to believe that he could have gone
22 to these conferences over a period of ten years and just not
23 have gotten that information across to his bosses at the
24 hospital.

25 Indeed, he has been involved with professional

1 organizations not only here but abroad. That is not a
2 suggestion. That does need to -- it should not lead this Court
3 to believe that he is a part of -- a participant in any
4 professional -- in any professional group, that that would
5 cause him to give him the comfort to leave.

6 That is really nothing more than recognition of his
7 contribution over the years to medical science.

8 He is a citizen. He has no prior criminality. He has
9 kept his property here. He has kept his property in American
10 banks and institutions.

11 He has associated with and became, I should say, in a
12 loose term, partners with a substantial public American
13 company. He's taking a position with an American company, an
14 executive position.

15 I have not seen a single document seized from -- from
16 the NCH of any violation of any of their policies and
17 principles, which again troubles me because we're not here for
18 that.

19 They are suggesting that he's stolen trade secrets and
20 taken them abroad. Respectfully, Your Honor, again, no
21 disrespect to anybody, this is -- since I've looked at this
22 case, I feel like it should be in civil -- in civil court.

23 There's been no cease-and-desist order. I've not seen
24 an original employment agreement. I haven't seen any of those
25 things.

1 Nobody has sued Avalon to prevent them from using the
2 information they have gotten. I find that to be amazing.
3 Remarkable. Truly.

4 I haven't found -- I haven't seen anything about any of
5 that. There's nothing here that suggests that this man should
6 leave the country to avoid facing this matter.

7 Surety has been discussed. I heard your comments about
8 your feelings regarding the surety that's been offered, but
9 I'll say this, Your Honor, and you don't necessarily want to
10 hear all my opinions about bonds, but over the years I find
11 that a promise to come to court for most people is stronger
12 than any bond that they can put up.

13 Quite frankly, a person who puts up a million dollar
14 bond, if they are willing to go, they go.

15 It would be disingenuous for me to suggest to this Court
16 that that's not true, and you know as well as I do that people
17 enter OR bonds every day who could very well go and stay.

18 It's a person's promise. It's their character. It's
19 what they are made of that brings them back to court.

20 Now, the courts and, of course, the government always
21 feels more comfortable to know that somebody else may be on the
22 hook or some property for something had that they spent their
23 life building toward on the hook.

24 For example, he and his wife spent years built toward
25 buying a place in San Diego. Why would they do that is beyond

1 me, but that's my opinion of California. It doesn't count.

2 What does count is they have expended all their
3 resources for this purpose, and they have taken a mortgage of
4 half a million dollars because they expect to be around to pay
5 it.

6 He does certainly. His character, his experience, is
7 that of a doctor, that of a Ph.D., that of a medical doctor.
8 He's unlicensed in the country, but he was licensed at one
9 point to practice to be a surgeon.

10 His character is that of an individual who stands up and
11 says what I did was right and what they have alleged is not
12 right. It is wrong. I will be here to face this case. I will
13 hire a lawyer. I will hire two lawyers. I will present my
14 case to the Court. I will make the government prove their case
15 beyond a reasonable doubt. I will be here.

16 That is his character. That is his nature. And, Your
17 Honor, we ask that you release him so he can -- well, normally
18 I would stop there, but the nature of this case is quite
19 complex.

20 I must tell you I learned nothing about exosomes when I
21 was in law school and anything thereafter.

22 There is going to be a substantial amount of information
23 that we as attorneys are employed to have to learn, and that's
24 going to be part of it. He will best help his defense if he is
25 released.

1 Your Honor, I ask -- I ask you to consider that. He's
2 going nowhere here, except for here, Your Honor.

3 THE COURT: Thank you.

4 MR. SEIDEN: Thank you.

5 THE COURT: Mr. Shimeall, anything more?

6 MR. SHIMEALL: Yes, Your Honor.

7 Respectfully, Your Honor, many if not all of the points
8 raised by Mr. Seiden do not go to the issue of detention. The
9 propriety or the veracity, the isolation method and the trade
10 secrets at issue in this case, we do agree, will be borne out
11 at trial, but that is not germane to the issue of detention.

12 The propriety of SAFEA's efforts to harvest foreign IP
13 are not germane to the issue of detention. What is important
14 is that he was engaged with the Chinese government, including
15 SAFEA, regarding the taking of foreign intellectual property.

16 The point about him being a citizen, Your Honor,
17 Mr. Zhou obtained citizenship in 2017 in the thick of the
18 ongoing fraud, so we think that should be given minimal weight,
19 and Mr. Seiden made a number of other points about value and
20 evidence and, of course, discovery has now begun, and we will
21 be providing him substantial documentation regarding this case,
22 and we're happy to do that, but, again, those are things that
23 will be borne out at trial.

24 To the extent, as Mr. Seiden said, that Mr. Zhou's
25 appearance hinges on his character, we think that for the

1 reasons we have put forth so far, that is a flimsy surety for
2 him to appear before this Court going forward.

3 For these reasons and all that we've put forth so far,
4 we believe he is a flight risk by a preponderance of the
5 evidence.

6 Thank you, Your Honor.

7 THE COURT: Mr. Shimeall --

8 MR. SHIMEALL: Yes.

9 THE COURT: -- today and both you and your opposing
10 counsel have relied on the previous hearing for expedience, but
11 I do want to ask you --

12 MR. SHIMEALL: Yes.

13 THE COURT: -- with focusing on this particular
14 defendant, which is what I must do at this point --

15 MR. SHIMEALL: Yes.

16 THE COURT: -- in considering the exhibits, which ones
17 are more important as to whether I should detain this
18 defendant?

19 MR. SHIMEALL: Your Honor, there are a number. His
20 connections in China are important. The defendant has a
21 driver's license in China. He has additional identification
22 are cards related to China. The defendant's business
23 connections are also important.

24 As the press release has indicated, and the defendant is
25 mentioned in several of the press releases, his company,

1 through his actions, had helped forge partnerships with
2 entities in China regarding exosomes.

3 Those business connections are germane because again,
4 Your Honor, he can get back to China and proceed on about his
5 life with minimal interference.

6 As we indicated, Beijing Jieteng is the defendant's
7 company along with his co-defendant, and Beijing Jieteng by all
8 indications has a Chinese bank account.

9 We have not been able to access those funds, of course,
10 but we are aware that Beijing Jieteng, again, within the last
11 five years, had about 400 -- a little north of \$400,000 in U.S.
12 dollars of registered capital in China.

13 Your Honor, the level of deceit, of course, is borne out
14 by the exhibits as well as by the overt acts listed in the
15 indictment that the grand jury found by probable cause.

16 I think, you know, the exhibits that I've highlighted so
17 far indicate that he has connections in China and that he would
18 return on about his life, in addition to the other exhibits
19 that we put forth for Ms. Chen.

20 THE COURT: Thank you, Mr. Shimeall.

21 MR. SHIMEALL: Thank you, Your Honor.

22 THE COURT: Mr. Seiden, anything further?

23 MR. SEIDEN: He is only a citizen of one country, Your
24 Honor. That is the United States. The other citizenship has
25 been disposed of.

1 With regard to there was an argument earlier about a
2 potential driver's license and some other document, those are
3 documents -- if you take a look at them -- you'll see he was
4 much younger then, and those are historical documents.

5 Your Honor, I've made my argument. Thank you very much.

6 THE COURT: Thank you. The Court will take a very
7 brief recess.

8 COURTROOM DEPUTY: Please rise. The Court is in
9 recess.

10 (Recess taken.)

11 COURTROOM DEPUTY: Please be seated.

12 THE COURT: In considering the government's request to
13 detain the defendant, I must consider a number of factors under
14 the Bail Reform Act, including the nature and circumstances of
15 the alleged offense, the weight of the evidence against the
16 defendant, the history and characteristics of the defendant,
17 and the nature and seriousness of dangers to others in the
18 community.

19 The government has asked me to detain the defendant on
20 the basis of a risk of flight. Accordingly, the government
21 must carry its burden by a preponderance of the evidence.

22 I find that the government has shown that the defendant
23 has meaningful connections to a foreign country, both family
24 connections and business connections, and also has had
25 considerable ties to a number of people in China who have

1 governmental access.

2 And so for those reasons, I find that the government has
3 shown me that there is a risk.

4 So then the next question becomes if there are
5 conditions that I can impose upon the defendant to mitigate any
6 of those risks.

7 In looking with specificity at the history and
8 characteristics of the defendant, I find that there are not.

9 Most importantly, because the ties to another country
10 are so deep, and looking at the ties the defendant has to our
11 district, and even to the United States, they are fairly
12 slight.

13 I will note that I appreciate that the defendant does
14 have a son here in the United States who is at Johns Hopkins,
15 but from my perspective that's the most meaningful tie and, of
16 course, the child is of an age at which he can take care of
17 himself.

18 I realize too that counsel -- defense counsel,
19 Mr. Seiden, ably has argued that the defendant has legitimate
20 defenses, and maybe those will carry the day at trial.

21 But for today's purposes I must ask if there is an
22 incentive to flee, and if there is a means to flee. And a
23 grand jury in the Southern District of Ohio found that there
24 was enough proof to charge the defendant.

25 If the defendant is convicted, he would face up to 20

1 years of in prison, so there is a strong incentive to flee, and
2 again I find that he has means.

3 He has financial means, and he also has a way to start
4 another life or, I should say, continue another life in China.

5 Based on the travel records I have in front of me, the
6 defendant has traveled to China very frequently in the last
7 couple of years.

8 So for all of these reasons, I find the government has
9 carried its burden, and the defendant will be remanded to the
10 custody of the U.S. marshals.

11 Is there anything further on behalf of the government
12 today?

13 MR. SHIMEALL: No, Your Honor.

14 THE COURT: Anything more on behalf of the defendant?

15 MR. SEIDEN: Nothing, Your Honor.

16 THE COURT: Thank you. Please adjourn court.

17 (The proceedings were adjourned at 4:09 p.m.)
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C E R T I F I C A T E

I, Allison A. Kimmel, do hereby certify that the foregoing is a true and correct transcript of the audio-recorded proceedings before the Honorable Kimberly A. Jolson, Magistrate Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Allison A. Kimmel

Allison A. Kimmel, FAPR, RDR, CRR, CRC
Official Federal Court Reporter
October 1, 2019